

APPEAL NO. 040289
FILED APRIL 5, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 6, 2004. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the third and fourth quarters. The claimant appeals these determinations on sufficiency of the evidence grounds and asserts that the hearing officer erred by admitting Carrier's Exhibit No. 4. No response was filed.

DECISION

Affirmed.

We first address the claimant's assertion that the hearing officer erred by admitting Carrier's Exhibit No. 4. To obtain reversal of a judgment based upon the admission of evidence, an appellant must first show that the admission was an abuse of discretion, and that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; see *also Hernandez v. Hernandez*, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). Reversible error is not ordinarily shown in connection with rulings on questions of evidence unless the whole case turns on the particular evidence admitted or excluded. *Atlantic Mut. Ins. Co. v. Middleman*, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). Applying this standard, we perceive no reversible error.

The hearing officer did not err in determining that the claimant is not entitled to third and fourth quarter SIBs. Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) establish the requirements for entitlement to SIBs. At issue is whether the claimant had no ability to work during the qualifying periods. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. *Garza v. Commercial Insurance Company of Newark, New Jersey*, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In view of the applicable law and the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *Cain v. Bain*, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **THE CONNECTICUT INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS STREET, SUITE 750
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge